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October 15, 1980

K.S.
Can you go
over this first?
Tx
16 Oct 1980

The Honorable Frank Carlucci
Deputy Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Director Carlucci:

There is enclosed your presentation to the Conference on Intelligence Legislation held at the University of Chicago Law School, June 26-28, 1980.

As we will shortly go to publication, will you please look it over and notify me within two weeks if there are needed changes. Please return the enclosure.

Thank you for your cooperation in this matter.

Sincerely,

Gen. Lawrence C. Williams
Staff Consultant

2455 N. Woodrow Street
Arlington, Virginia 22207

Enclosure

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the Defense Department, and HEW. Certainly, we are fortunate that a man with such broad, deep, and relevant experience was selected as the Deputy Director of the Central Intelligence Agency, to which post ^{he} was appointed by the President on February 18, 1978. We are delighted to have ^{him} you with us, and I give you Director Carlucci.

Honorable Frank Carlucci

Deputy Director
Central Intelligence Agency

Thank you, Morry, for those very kind words. I am delighted to be with you tonight, and I congratulate you, Morry, and Dean Casper for organizing this conference. I think this kind of conference can do a great deal to illuminate the very difficult issues that our country faces in the intelligence area. And as you begin your deliberations let me start off with a reminder. You will be studying in depth the role of the Congress, the role of the Executive, and the role of the Judiciary in structuring the legal framework for our intelligence agencies. And In doing this you will necessarily bring to bear traditions of the American legal profession and the American governmental system. But as you do this, I think it is important that you bear in mind that those of us in the intelligence agencies, that GS-12 or 13 up there in some other country trying to recruit an agent, operates under circumstances where our rules are not necessarily applicable. Our cultures are very different.

I'm reminded of the time when I was a young Foreign Service officer back in 1960, and I'd been assigned to the Congo, El Zaire, then Leopoldville; and It was shortly after independence and the Congo was in chaos. And we had a visit from three American senators--Senator Gore, who is presently on our Intelligence Oversight Board; Senator Hart; and Senator Neuberger. And I was named as escort officer and I had arranged for them to have lunch at the home of the President of the Congolese Senate, a man named Victor Cumarico. And In those days you very seldom saw the wives of the Congolese. But as we came in the door a woman came up who I introduced as his wife. We were sitting around having drinks before lunch (I was interpreting), and another woman came in and shook hands all around, went over and sat down next to the first woman. Senator Gore turned to me and said, "Who is she?" And I said, well, I don't know, maybe she's his wife. He said, "I thought you said that first woman was his wife." I said, "Let me ask him." I asked him and he said, "Oh yes, both of them are my wives." Well with that the interest of the American senators picked up

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over here our customs are very different from yours. From where I come from in the Leopold district of the Congo, I'm a big tribal chief and as a tribal chief I'd normally be entitled to five or six wives. But since I'm a Catholic, I have only two." ✓

So if we think about it, the strangeness of the intelligence business operating in other cultures becomes apparent. We, in organizations like the CIA, must go forward with our task, often in disregard of foreign law. And there's a paradox here, because in this country we are sometimes mesmerized by our legalisms when we structure our environments in which our intelligence agencies must live. But in so doing we must be careful not to block out the realities of our operating environment. The decision makers in our country need a great deal of information. This information is not easy to come by, by definition. We in the intelligence business go after the most difficult and by definition, other countries want to conceal it from us. Our job is to get it. We do so in many cases by establishing a contractual relationship, something very familiar to you lawyers. The agent provides a service, information, and we frequently but not always provide some compensation, salary. There are two significant differences from the usual contract. One is that in many instances that contract may break the law of the agent's host country. And the second is that that contract by nature must be secret. Now, I don't think any of us should make any apologies for this procedure. When it comes down to the hard facts, our country has no alternative. The problem that we all face, and you as lawyers in particular face, is how we sanction this kind of activity within a carefully drawn legal framework. ✓

The 1947 National Security Act simply said do what's necessary. It dodged the issue. Or perhaps it is possible, I personally think it is, to be more specific, but in being more specific, we must always bear in mind that we are legalizing an activity that is inherently antagonistic to the interests of other countries in which that activity is going to be conducted. ✓

There's another upside down element to the intelligence business. In our society openness is a virtue. The government can't be closed. We have Sunshine Laws, open advisory committee meetings; we're perhaps unique in the world in this aspect. But in the intelligence business we must by nature circumscribe our openness. Secrecy is absolutely imperative. Well, you say, that's a truism. Of course, we all know that. But I can tell you quite frankly in the two and a half years that I've been in the CIA, getting this simple concept across has been our ✓

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single most difficult problem. Our problem throughout the world is that nobody believes we can keep a secret. And it's not just a simple problem of leaks. But quite frankly it's the entire atmosphere in which we operate. As you're all aware, we're living in the post-Watergate, post-Vietnam syndrome where the emphasis has been placed on the investigative reporter, the inspector, the oversight mechanism, the leaker who almost inevitably takes on a moral mantle and says he's a whistle blower. And all of these people and functions have a very legitimate role. No question about it. I don't mean to gainsay it. So does the doer have a legitimate role and we have to strike a balance, and I would suggest to you the balance has been tilted a bit away in government from the man who must accomplish the mission. We need to give him some incentives, too. We need to give him some tools. And in the intelligence business the principal tool--I'm almost tempted to say the only tool--is secrecy, because nobody is going to impart information to an intelligence representative if he thinks he's going to see it in the open and if this information is going to be traced to him. And this inability to protect confidentiality of the information given to us has hurt us.

Now, our critics say demonstrate this. Well, you as lawyers know how difficult it is to prove a negative. Nobody is going to come up to you and say, "Well I didn't give you this information for this reason." We've had some cases of people who have said, "I can't trust you; therefore, I'm signing off." But in the vast majority of cases people just discontinue contact or don't establish contact in the first place, and you never know how much information you didn't receive. But time and time again we are asked, "Well, is this information going to go to the Congress? Can you protect me? What about the Freedom of Information Act?" When you're involved in high stakes, nobody wants to play with a partner who can't control his own hand.

Before we frame new laws in any business, including the intelligence business, I think we need to be clear on the existing laws. Some moments ago I suggested that because of the world in which we operate some of our usual norms do not apply. I would suggest also that our standards have not remained constant but have changed over time. We have had a propensity to indulge in retroactive morality and to give it a legal base. We have perceived in the seventies what seemed to have been a good idea for law in the fifties and sixties. We have seen numerous accusations that intelligence agencies have acted illegally when, in fact, the law has only been interpreted as such in recent times. An example is the retention by CIA of counterintelligence information on U.S. persons. Everybody readily concludes that that's illegal, although the CIA has long had

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counterintelligence responsibilities and much of the same kind of information is held by other agencies without any problem. Sorting out this particular issue has been complicated. It has now been determined that CIA can act in this area only in cooperation with the FBI. That is a recent development, not as much of the press would have you believe the law as it existed in the sixties. Of course we recognize that times have changed, and we in the intelligence business don't want to turn the clock back. To the contrary, we think our mission is to look ahead into the 1980s and to put all the polemic behind us. And in so doing we welcome guidelines and safeguards through statutory authority and through the surrogate process. These are helpful, providing of course that they don't impede our ability to do our job.

As we've gone through successive iterations of intelligence legislation, there are some concepts that have arisen that I personally consider a bit curious or difficult. One is that we can reduce every detail of the intelligence business to statute. The original intelligence charter, S. 2525, 273 pages, had an array of prohibitions, restrictions, and reporting requirements. There was even one that said CIA should be prohibited from covertly taking action likely to lead to flood, pestilence, plague, or mass destruction of property. And in CIA there was a tongue-in-cheek comment that we ought to oppose this just to keep our options open. But the sting was there. I think all of us, including the vast majority of people on the Hill, now realize that we can't legislate the intelligence business in that kind of detail.

There is another interesting concept, legislation which is perhaps not unique to the intelligence business but which runs somewhat along the following lines, and that is that if you don't like the policy--kill the instrument. This has happened with covert action. Our ability to try and influence events in other countries clandestinely. There were people who objected to how this instrument was used—Chile, Angola, perhaps elsewhere. Fair enough, but saying that you can't have this capability. Because we object to that policy it's like saying we can't have an aid program around the world, because we object to the way aid was handled in Brazil in 1966. It's even gone one step further, in my judgment. We created an optical illusion, because we said our country will have a corporate action capability. All that has to happen before you start one of these operations is for the President to make a finding and you brief eight committees of Congress. That's two hundred members of Congress, perhaps fifty staff. Now, fair enough, we haven't always had to brief that many members. But as long as the requirement exists it is a significant deterrent to a flexible instrument that

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Despite the problems that I've mentioned, it seems to me that we have reached agreement in the body politic on some of the very large issues that have faced our country in the intelligence area. First of all, we have agreed that we need an effective intelligence organization; we need an effective CIA. Some of you may have seen the ABC program the other night on intelligence, and the commentator was Britt Hume. He interviewed me for some forty minutes--none of the interview was used on the program--but the theme he was following in the interview was how in the world have you guys pulled the wool over the eyes of the Congress and the American people, because four or five years ago we were ready to tear you apart and now we find this outpouring of sympathy for CIA. I allowed as how I didn't exactly see an outpouring of sympathy, but I detected a lot of support and I presumed that some of the arguments we were making carried a certain amount of weight. But the fact is that the American people, perhaps as never before, realize how important intelligence is to their well-being and we can no longer continue to pull it out by the roots just to see how it's growing.

We have decided that the U.S. government will have covert action capability and that it will be housed in the CIA. And I think there is a widespread consensus on the Hill that we do need to cut down the reporting requirements from eight committees to two. And if there's any bill that will pass this year, I think it is a bill that cuts down on the Hughes-Ryan reporting requirement. There is a consensus that CIA needs to protect the information it receives. The only issue is how to do this. There is a consensus that U.S. citizens must receive a full measure of protection of their constitutional rights vis-a-vis intelligence organizations. And there is a consensus that there will be effective oversight of our intelligence organizations. And I'm pleased to report to you that, in my judgment at least, that oversight is working well. We don't always agree with our friends on the committees and vice versa. We get criticism, we get support, and we have a heated dialogue. The important thing is that it's there and it's working and it's working well in my judgment.

These new aspects of agreement are now very much ^{a part} of intelligence community life. There are still some issues that remain to be resolved. One of these is the whole question of statutory access to CIA intelligence information. Is it necessary for the oversight process? There are those who argue that it is. We say we've had a relationship for the past two years which we both say is satisfactory. Let's continue that relationship where we are furnishing the

information that you need. If you build in a statutory requirement there must be some exceptions, otherwise you raise questions around the world. I myself have been told by people who were giving us very important information, "We will give you this information providing you promise us that you will not give it to the communists." I was able to make that commitment because if I passed that kind of a commitment onto the Congress today, they respect it. With a statutory right of access, there is no way that I could make that kind of commitment.

There remains to be worked out the question of details on the collection of intelligence on U.S. persons. Now there's been a lot of debate on the tensions between civil liberties and intelligence. As a practical matter, looking at its pragmatic aspects, I think this debate has been overdone. We don't need a lot of intelligence on Americans. The problem is that when we do need it, it's liable to be critical. We can all think of cases where intelligence collection on an American citizen might be important: A dual national who is in a high position in a particularly critical country, or The American scientist who might be engaged in the building of a bomb for a potential nuclear proliferator.

The question, in my judgment, is not whether or what kinds of thresholds should be built. And we agree that there ought to be substantial thresholds. So we see it not as an either/or question but as essentially a design question. There is the issue of how much exemption there should be from freedom of information concepts. And here there's been a good deal of misunderstanding. The press would have you believe that we have sought a blanket exemption from the Freedom of Information Act. We have not. We have sought the authority to exempt our most sensitive sources and methods from release and from judicial review. This position has been supported by the Justice Department, but we will continue to respond to first-person requests and to requests for our finished product.

Also unresolved is the form identities legislation should take. Everybody agrees that the practice of deliberately exposing CIA personnel and CIA agents overseas with the avowed purpose of destroying our intelligence organizations is abominable. The question is how to deal with this practice without infringing on First Amendment rights. We believe this can be done and we hope that it will be done this year.

These are all issues that you will be debating and we will read the results of your deliberations with great interest. But let me give you, for just a minute

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before closing, a non-lawyer's appreciation of what is at stake. The 1980s, in my judgment, will be a very difficult period. We are finding that our nation's interests are increasingly intertwined with developments in all parts of the world. We learned in Afghanistan that it's not sufficient to know Soviet capabilities, we have to know their intent. We learned in Iran that we need to have intelligence on political/social developments. We learned in Central America the importance of intelligence in subversive activities. And we learned in the oil crisis the importance of intelligence collection and analysis in the resource areas. The U.S. and Soviet strategic forces are now more in balance than ever before. My judgement is Soviet leaders see themselves free to undertake additional Afghanistans and Ethiopias as long as they don't challenge vital U.S. interests. Under the protection ^{of} ~~to~~ their strategic power, they can wield their very substantial conventional power and their very substantial capability for political action.

There are two uncertainties in Soviet society. They have their problems: ✓
Rising consumer expectations; labor shortages; declining growth rate; unrest in Eastern Europe; topping out in oil production is perhaps the most important transition, and I frankly doubt that we should take any satisfaction in the problems of the Soviet Union. We know very little about the leadership that is likely to come in after the transition phase--post-Stalin leadership. We have a conservative leadership in the Soviet Union right now. Nobody knows ~~how~~ a new leadership under the pressure of the topping out of oil production, consumer expectations, and the other problems I mentioned, ~~how that leadership will react.~~ ✓
The 1980s clearly will be a difficult period in our relations with the Soviet Union. Similarly, there will be no let up, in my judgment, in the problems of the Third World. In addition to the aspirations of the Third World, we have a growing division between the upper and lower tier of Third World countries. And then in Europe we see an emerging economic power that could lead to stronger political positions on the part of our allies. ✓

The ramifications of all of this for intelligence are profound. There is less and less margin for error. We must succeed in getting good intelligence with regard to both intentions and capabilities. During the period to come, intelligence could make that crucial margin of difference. There are those who think that the paramount threat in this country comes ^{from} ~~within~~, from the excesses of our own institutions. As one who has lived in a number of countries where democratic institutions have been destroyed, I share that concern. But I've also seen Soviet expansionism at work, and that danger is no less real. And what we're talking about is not a tradeoff. It seems to me we can certainly accommodate ✓

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concerns on both sides of the intelligence issue if we can just control our emotions in channeling our intellects. You as lawyers are the dispassionate element in American society. We need your help. The tools of the profession here assembled are those of law. And thanks to the legal system, the richness of the legal system, there are a variety of measures that can be seized upon to work our will. And thanks to the constitutional framework of that system and the levers and gears of our self-governance are never very far away.

While the tools are there in profusion, it must take the wisdom of the law to ensure that the measures apply to stimulate good help without permitting abnormal growths or flooding the system with toxic medicines. Lawyers know only too well ~~and~~ ^{the} ~~decry~~, there ought to be a law, takes us only to the starting point of inquiry. Thank you.

Ref 02
Tape 1

Morris Leibman

Mr. Carlucci is willing to take a few extra moments for some questions. You can field them yourself if you'd like.

Q. I've been almost 40 years in this profession and most of it was spent in the Agency. I have rarely heard an exposition of the problems and of the needs of this country such as you have presented. I think it was an absolutely fantastic performance, and I wonder if you would just ~~tell~~ ^{try} these people on a minor point what it has cost us and perhaps other agencies of the government in connection with ~~the~~ Freedom of Information Act ~~to answer~~ ^{to answer} requests.

A. Well, thank you, Walter, for your kind words. The Freedom of Information Act around the world has come to be regarded as a symbol. It's a symbol of all the problems that I was discussing ⁱⁿ the earlier part of my remarks. The basic inability of our government to keep a secret. Now, as a lawyer you can argue that you have exemptions under the Freedom of Information Act. But try and argue that in an alley somewhere in Eastern Europe or perhaps even in Afghanistan when the individual with whom you're dealing sees daily in the press articles coming out attributed to the Freedom of Information Act. He's taking a big gamble. Or try and argue with a sophisticated intelligence service, many of whom have sent representatives over ^{to} ~~just~~ discuss FOIA with us, and assure them that you have exemptions. They say, "Yes, we can trust you but what about those 400 Federal judges. Can you give us a guarantee that one of them won't reverse you?" And, indeed, in two cases we

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21 October 1980

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